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## REPORT NO. 1A

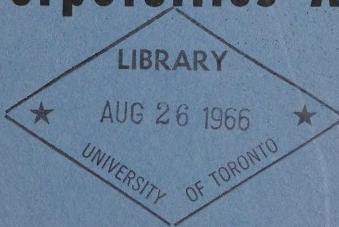
ONTARIO LAW REFORM COMMISSION

to

THE ATTORNEY GENERAL

FOR ONTARIO

The Perpetuities Act, 1965







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## ONTARIO LAW REFORM COMMISSION

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TO THE HONOURABLE A. A. WISHART, Q.C.  
ATTORNEY GENERAL FOR ONTARIO.

Dear Mr. Attorney,

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On February 1, 1965, the Commission submitted its report concerning the Rule Against Perpetuities with recommendations for enactment of The Perpetuities Act, 1965 and amendments to associated statutes. Bills of the proposed legislation were introduced, printed, and along with copies of the Report, given wide circulation. It was felt that all interested persons should have an opportunity to peruse and comment upon the Report as well as the proposed legislation before final legislative action was taken.

The Commission was encouraged to find that its recommendations on major points had received the approval, indeed the enthusiastic approval, of a substantial majority of the legal scholars with a special interest in this particular field. It will be recalled that the Commission, in its original Report, took the view that any legislation dealing with perpetuities reform should not deal with the matter on a piecemeal basis but rather should attempt to find some broad remedial





principle which would avoid the extremely unsatisfactory results of the application of the present law. The principle proposed was "wait and see" which means that a limitation is presumed to be valid, even though the interest might possibly vest outside the perpetuity period, until such time as it is shown by actual events that the interest cannot vest within the period. The representations which have been received, have confirmed the view of the Commission in the soundness of this principle.

It is generally conceded that "wait and see" cures the present ills of the law, but it does raise the difficulty of defining lives for the purpose of the rule. It was on this point and the provisions of section 6 of Bill 96 (The Perpetuities Act, 1965) that much of the criticism of the proposed legislation fell. The Commission is persuaded that section 6 should be amended. The Commission shares the view of the commentators on the English Act that the lives chosen must be lives which, when the instrument became effective, would have some relevance in limiting the time within which the gift might vest. Such a provision would exclude a number of the highly improbable illustrations given by those who oppose adoption of the "wait and see" principle. It is accordingly recommended that subsection 1 of section 6 of Bill 96 be replaced by the following:

"6. (1) Except as provided in section 9, subsection 3 of section 13 and subsection 2 of section 15, the perpetuity period shall be measured in the same way as if this Act had not been passed, but in measuring that period by including a life in being when the interest was created,

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no life shall be included other than that of any person whose life, at the time the interest was created, limits, or is a relevant factor that limits in some way the period within which the conditions for vesting of the interest may occur."

It is felt that this new subsection operates negatively to exclude a great many lives which might otherwise cause difficulty in the application of the "wait and see" principle. Indeed, it might have proved too restrictive when dealing with class gifts and accordingly an attempt has been made to extend the relevancy of the lives in this particular situation. An illustration will make this clear.

Suppose a limitation at common law "to the children of A who shall attain 25." On the testator's death A has two children, X and Y, aged 1 and 2, respectively. Obviously, the entire gift fails at common law. Under the proposed Act, assuming that subsection 1 of section 6 is amended to read as above, it is clear that A is a relevant life since his life will place a limit on the entire gift in the sense that after his death there can be no further children and therefore his life does limit the time within which the gift must vest. If one takes only A's life as a relevant life, then if A has any children living 21 years after his death the gift can be saved by the "reduction of age" provisions of section 8. But the question is whether the lives of X and Y are relevant lives for the purpose of this gift. They are certainly relevant to the question whether X and Y take, since if they take it must be within their own lifetime and their lives are therefore



a limiting factor on the time which they require to take a vested interest. X and Y may outlive A but may die before fulfilling the condition of attaining 25. Are the lives of X and Y then relevant to any further children of A who were born after the testator's death? In a sense, the lives of X and Y are relevant factors which "in some way" limit the time for vesting, but in another sense they are not relevant at all to the limit of time within which other children of A would take.

It would seem contrary to common sense to exclude the lives of existing potential members of the class and include only their parent. Accordingly the Commission is recommending the addition of the following subsection to cover the special problem in class gifts:

"6. (2) A life that is a relevant factor in limiting the time for vesting of any part of a gift to a class shall be a relevant life in relation to the entire class."

Finally, as in the previous draft, where there are no relevant lives the perpetuity period is to be taken as 21 years. This is contained in former subsection 2 of section 6 which will now be subsection 3. It reads as follows:

"6. (3) Where there is no life satisfying the conditions of subsection 1, the perpetuity period shall be 21 years."

Section 9 of Bill 96 deals with the situation where there is a condition in a limitation relating to the death of a



surviving spouse. It was submitted that the life of the surviving spouse should be deemed to be a life in being for the purpose of a gift to that spouse. The Commission has adopted this suggestion and recommends that section 9 be redrafted as follows:

"9. Where any disposition is made in favour of any spouse of a person in being at the commencement of the perpetuity period, or where a limitation creates an interest in real or personal property by reference to the time of the death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, for the purpose of validating any such disposition or limitation, that but for this section would be void as offending the rule against perpetuities as modified by this Act, the spouse of such person shall be deemed to be a life in being at the commencement of the perpetuity period even though such spouse was not born until after that time."

An error in drafting appeared in subsection 2 of section 10 of Bill 96. It was not the intention of the Commission peremptorily to accelerate all ulterior limitations if a prior limitation is void for remoteness since the ulterior limitation might be still contingent when the prior limitation failed. The Commission recommends that the subsection be redrafted as follows:

"10. (2) Where a limitation is invalid under the rule against perpetuities, any subsequent interest that, if it stood alone, would be valid, shall not be prevented from being accelerated by reason only of the invalidity of the prior interest."

Subsection 1 of section 13 in Bill 96 dealt with options to acquire a reversionary interest expectant on the termination of



a lease and subsection 3 of section 13 was intended to deal with options to purchase in gross. There was no intention of having the provisions of subsection 3 of section 13 apply to options to renew a lease, to which the rule against perpetuities does not now apply. The Commission recommends that a new subsection 4 be added to section 13 to make this abundantly clear. The recommended text is as follows:

"13. (4) The rule against perpetuities does not apply nor do the provisions of subsection 3 of this section apply to options to renew a lease."

Bill 96 did not deal specifically with the problem of easements, profits à prendre and other similar interests and the effect, if any, of the rule against perpetuities upon them. The whole question of easements is one of conveyancing rather than one related to the main problem with which perpetuities is concerned, namely, the disposition of accumulated wealth. The relation of the rule against perpetuities and easements is shrouded in uncertainty at common law. There appears to be some authority that the rule may not apply to easements at all, in the sense that an easement to begin in the future was capable of a common law grant, and originally perpetuities did not apply to common law grants but only to executory limitations which were not capable of vesting except by taking effect in possession. It is now generally accepted that the rule against perpetuities applies to easements granted to begin at a time beyond the perpetuity period.

The latest authority dealing with the matter in England



is Dunn v. Blackdown Properties, (1961) 2 All E.R. 62, in which a grant of certain property had been made to the plaintiff's predecessor in title together with the right to use the sewers and drains "now passing or hereafter to pass" under a private road which belonged to the defendants' predecessor in title. At the time when the grant to the plaintiff's predecessor was made, there were no sewers on which the right granted could be exercised, although some time later a surface water sewer was constructed. The Court held the easement was void on the ground of perpetuity since the easement claimed by the plaintiff might have arisen outside the perpetuity period.

Two things appear clear with regard to easements and perpetuities. One, the existing perpetuity period of a life plus 21 years, should have no application to an easement or anything similar to an easement since the question of lives which originally related to minorities of possible beneficiaries, etc. is totally inapplicable and the easement or other interest is one that is usually bargained for as part of a sale or other commercial transaction. Two, it is equally clear that even if some period other than the customary perpetuity period were substituted, the same principle of "wait and see" should apply as with other interests dealt with in Bill 96 and accordingly the future easement should not be void unless actual events prove that it could not arise within a given period of time. The Commission therefore recommends the addition of a new section 14 as follows:



"14. In the case of an easement, profit à prendre or other similar interest to which the rule against perpetuities may be applicable, the perpetuity period shall be forty years from the time of the creation of such easement, profit à prendre, or other similar interest, and the validity or invalidity of such easement, profit à prendre or other similar interest, so far as remoteness is concerned, shall be determined by actual events within such forty-year period, and the easement, profit à prendre, or other similar interest, is only void for remoteness if, and to the extent that, it fails to acquire the characteristics of a present exercisable right in the servient land within the forty-year period."

Further consideration of the special problem raised by determinable interests has led the Commission to make recommendations for substantial amendment of section 14 of Bill 96, which will now be renumbered section 15. As the section stood originally, the events terminating a determinable interest were operative only within the perpetuity period, or to put the matter another way possibilities of reverter beyond the perpetuity period were void. Under the amended subsection 1 of section 6, we are dealing with the perpetuity period in terms of selecting a life or lives which set limits on the period of vesting. This language is inadequate in the case of possibilities of reverter and rights of re-entry which, from many points of view, are already vested interests. For this reason alone, we think we ought to revise or expand our definition of the perpetuity period so as to meet the exact situation with which we are dealing and which is much more a question of the duration of an interest rather than a question of vesting.



Accordingly, we recommend that a new subsection be added which embraces the possibility of there being some cases where a life is truly relevant either because expressly made so in the will or because of the nature of a condition which limits the previous interest. Clearly then for some purposes we must include a life or lives. The new subsection would read as follows:

"15. (2) In the case of a possibility of reverter on the determination of a determinable fee simple, or in the case of a possibility of a resulting trust on the determination of any determinable interest in any real or personal property, or in the case of a right of re-entry following on a condition subsequent, or in the case of an equivalent right in personal property, the perpetuity period shall be measured as if the event determining the prior interest were a condition to the vesting of the subsequent interest, and failing any life in being at the time the interests were created that limits or is a relevant factor that limits in some way the period within which that event may take place, the perpetuity period shall be 21 years from the time when the interests were created."

The opinion has been expressed that the full perpetuity period is too long for what has been described as "cases of private town planning". This view has much merit but if there is some relevant life it seems arbitrary to limit the period to 21 years. There is, of course, no magic in any chosen period but the Commission feels that the outside duration for this type of interest should be 40 years. We recommend that subsection 3 be added to



section 15. This subsection, along with subsection 2, is intended to include lives as re-defined for this situation but which limits the maximum of the period to one of 40 years in any event.

The subsection which is recommended reads as follows:

"15. (3) Even though some life or lives in being may be relevant in determining the perpetuity period under subsection 2, the perpetuity period for the purposes of this section shall not exceed a period of 40 years from the time when the interests were created and shall be the lesser of a period of 40 years and a period composed of the relevant life or lives in being plus 21 years."

The provisions of Bill 96 governing the applicability of the rule to non-charitable purposes were contained in the former section 15, now section 16. Strong representations were made to the Commission that if non-charitable purpose trusts are to be allowed at all, their duration should be limited to a gross period of 21 years and not allowed for the full perpetuity period by reference to lives in being. The Commission is impressed with the merit of this suggestion and recommends that the section be amended to read as follows:

"16. (1) A trust for a specific non-charitable purpose that creates no enforceable interest in a specific person shall be construed as a power to appoint the income or the capital, as the case may be, and, unless the trust is created for an illegal purpose or a purpose contrary to public policy, the trust is valid so long as and to the extent that it is exercised either by the original



trustee or his successor, within a period of 21 years, notwithstanding that the limitation creating the trust manifested an intention, either expressly or by implication, that the trust should or might continue for a period in excess of that period but, in the case of a trust that is expressed to be of perpetual duration, the court may declare the whole limitation to be void if the court is of the opinion that by so doing the result would more closely approximate the intention of the creator of the trust than the period of validity provided by this section."

This report deals only with recommended changes of substance. Further drafting changes have been incorporated into the original text with the fullest cooperation and assistance of L. R. MacTavish, Esq., Q.C., Senior Legislative Counsel, and Mr. R. E. Priddle, Assistant Inspector of Legal Offices. We suggest that when the Bill is redrafted and is available that a copy be attached to this report. The Commission is most grateful for briefs and comments received from the following persons and institutions:

Dr. J.H.C. Morris  
University of Oxford

Prof. W. Barton Leach  
Law School of Harvard University

Prof. David E. Allan  
Victoria University of Wellington,  
New Zealand

Terence Sheard, Esq., Q.C.  
on behalf of The Law Society of Upper Canada

Prof. Richard Grosse  
Queen's University



Mr. A. D. Hughes  
King's College, University of London

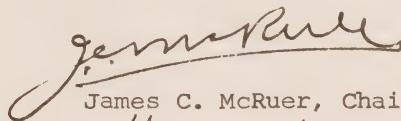
Colin M.A. Strathy, Esq., Q.C., Chairman  
Sub-committee of the Wills and Trusts Section,  
The Canadian Bar Association

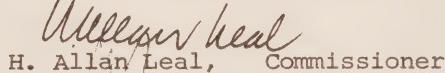
Prof. C. G. Bale  
Queen's University

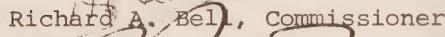
W. S. Walton, Esq., Q.C.

As in the case of the original report, so with the analysis of the representations on the draft Bill and the preparation of the recommended amendments, the Commission has had the assistance of Dr. C. A. Wright, Q.C., Dean of the Faculty of Law of the University of Toronto. We wish to express to him our appreciation for making available to us his wide and scholarly knowledge in this particularly difficult field.

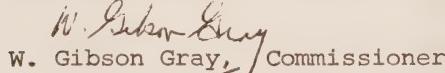
All of which is respectfully submitted.

  
James C. McRuer, Chairman

  
H. Allan Leal, Commissioner

  
Richard A. Bell, Commissioner

  
William R. Poole, Commissioner

  
W. Gibson Gray, Commissioner



## BILL 131

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4TH SESSION, 27TH LEGISLATURE, ONTARIO  
14-15 ELIZABETH II, 1966

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### An Act to modify the Rule against Perpetuities

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MR. WISHART

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TORONTO  
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BILL 131

1966

### An Act to modify the Rule against Perpetuities

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpre-  
tion

(a) "court" means the Supreme Court;

(b) "in being" means living or *en ventre sa mere*;

(c) "limitation" includes any provision whereby property or any interest in property, or any right, power or authority over property, is disposed of, created or conferred.

**2.** The rule of law known as the rule against perpetuities shall continue to have full effect except as provided in this Act.

Rule  
against  
perpetuities  
to continue;  
saving

**3.** No limitation creating a contingent interest in real or personal property shall be treated as or declared to be invalid as violating the rule against perpetuities by reason only of the fact that there is a possibility of such interest vesting beyond the perpetuity period.

Possibility  
of vesting  
beyond  
period

**4.**—(1) Every contingent interest in real or personal property that is capable of vesting within or beyond the perpetuity period shall be presumptively valid until actual events establish,

Pre-  
sumption of  
validity and  
"Wait and  
See"

(a) that the interest is incapable of vesting within the perpetuity period, in which case the interest, unless validated by the application of sections 8 and 9, shall be treated as void or declared to be void; or

(b) that the interest is incapable of vesting beyond the perpetuity period, in which case the interest shall be treated as valid or declared to be valid.

General power of appointment

(2) A limitation conferring a general power of appointment, which but for this section would be void on the ground that it might become exercisable beyond the perpetuity period, shall be presumptively valid until such time, if any, as it becomes established by actual events that the power cannot be exercised within the perpetuity period.

Special power of appointment, etc.

(3) A limitation conferring any power, option or other right, other than a general power of appointment, which apart from this section would have been void on the ground that it might be exercised beyond the perpetuity period, shall be presumptively valid, and shall be declared or treated as void for remoteness only if, and so far as, the right is not fully exercised within the perpetuity period.

Applications to determine validity

**5.**—(1) An executor or a trustee of any property or any person interested under, or on the validity or invalidity of, an interest in such property may at any time apply to the court for a declaration as to the validity or invalidity with respect to the rule against perpetuities of an interest in that property, and the court may on such application make an order as to validity or invalidity of an interest based on the facts existing and the events that have occurred at the time of the application and having regard to sections 8 and 9.

Interim income

(2) Pending the treatment or declaration of a presumptively valid interest within the meaning of subsection 1 of section 4 as valid or invalid, the income arising from such interest and not otherwise disposed of shall be treated as income arising from a valid contingent interest, and any uncertainty whether the limitation will ultimately prove to be void for remoteness shall be disregarded.

Measurement of perpetuity period

**6.**—(1) Except as provided in section 9, subsection 3 of section 13 and subsection 2 of section 15, the perpetuity period shall be measured in the same way as if this Act had not been passed, but, in measuring that period by including a life in being when the interest was created, no life shall be included other than that of any person whose life, at the time the interest was created, limits or is a relevant factor that limits in some way the period within which the conditions for vesting of the interest may occur.

Idem

(2) A life that is a relevant factor in limiting the time for vesting of any part of a gift to a class shall be a relevant life in relation to the entire class.

Idem

(3) Where there is no life satisfying the conditions of subsection 1, the perpetuity period shall be twenty-one years.

**7.**—(1) Where, in any proceeding respecting the rule against perpetuities, a question arises that turns on the ability of a person to have a child at some future time, then, <sup>Presumptions and evidence as to future parenthood</sup>

- (a) it shall be presumed,
  - (i) that a male is able to have a child at the age of fourteen years or over, but not under that age, and
  - (ii) that a female is able to have a child at the age of twelve years or over, but not under that age or over the age of fifty-five years; but,
- (b) in the case of a living person, evidence may be given to show that he or she will or will not be able to have a child at the time in question.

(2) Subject to subsection 3, where any question is decided <sup>Idem</sup> in relation to a limitation of interest by treating a person as able or unable to have a child at a particular time, then he or she shall be so treated for the purpose of any question that may arise concerning the rule against perpetuities in relation to the same limitation or interest notwithstanding that the evidence on which the finding of ability or inability to have a child at a particular time is proved by subsequent events to have been erroneous.

(3) Where a question is decided by treating a person as <sup>Idem</sup> unable to have a child at a particular time and such person subsequently has a child or children at that time, the court may make such order as it sees fit to protect the right that such child or children would have had in the property concerned as if such question had not been decided and as if such child or children would, apart from such decision, have been entitled to a right in the property not in itself invalid by the application of the rule against perpetuities as modified by this Act.

(4) The possibility that a person may at any time have <sup>Idem</sup> a child by adoption, legitimation or by means other than by procreating or giving birth to a child shall not be considered in deciding any question that turns on the ability of a person to have a child at some particular time, but, if a person does subsequently have a child or children by such means, then subsection 3 applies to such child or children.

**8.**—(1) Where a limitation creates an interest in real or personal property by reference to the attainment by any person or persons of a specified age exceeding twenty-one <sup>Reduction of age</sup>

years, and actual events existing at the time the interest was created or at any subsequent time establish,

- (a) that the interest, apart from this section, would be void as incapable of vesting within the perpetuity period; but
- (b) that it would not be void if the specified age had been twenty-one years,

the limitation shall be read as if, instead of referring to the age specified, it had referred to the age nearest the age specified that would, if specified instead, have prevented the interest from being so void.

**Exclusion  
of class  
members  
to avoid  
remoteness**

(2) Where the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, prevents subsection 1 from operating to save a limitation creating an interest in favour of a class of persons from being void for remoteness, such persons shall be excluded from the class for all purposes of the limitation, and the limitation takes effect accordingly.

**Idem**

(3) Where a limitation creates an interest in favour of a class to which subsection 2 does not apply and actual events at the time of the creation of the interest or at any subsequent time establish that, apart from this subsection, the inclusion of any persons, being potential members of a class or unborn persons who at birth would become members or potential members of the class, would cause the limitation to the class to be void for remoteness, such persons shall be excluded from the class for all purposes of the limitation, and the limitation takes effect accordingly.

**Interpre-  
tation**

(4) For the purposes of this section, a person shall be treated as a member of a class if in his case all the conditions identifying a member of the class are satisfied, and a person shall be treated as a potential member if in his case some only of those conditions are satisfied but there is a possibility that the remainder will in time be satisfied.

**Spouses**

9. Where any disposition is made in favour of any spouse of a person in being at the commencement of the perpetuity period, or where a limitation creates an interest in real or personal property by reference to the time of the death of the survivor of a person in being at the commencement of the perpetuity period and any spouse of that person, for the purpose of validating any such disposition or limitation, that but for this section would be void as offending the rule against

perpetuities as modified by this Act, the spouse of such person shall be deemed to be a life in being at the commencement of the perpetuity period even though such spouse was not born until after that time.

**10.**—(1) A limitation that, if it stood alone, would be valid <sup>Saving</sup> under the rule against perpetuities is not invalidated by reason only that it is preceded by one or more limitations that are invalid under the rule against perpetuities, whether or not such limitation expressly or by implication takes effect after, or is subject to, or is ulterior to and dependent upon, any such invalid limitation.

(2) Where a limitation is invalid under the rule against <sup>Acceleration of expectant interests</sup> perpetuities, any subsequent interest that, if it stood alone, would be valid shall not be prevented from being accelerated by reason only of the invalidity of the prior interest.

**11.**—(1) For the purpose of the rule against perpetuities, <sup>Powers of appointment</sup> a power of appointment shall be treated as a special power unless,

- (a) in the instrument creating the power it is expressed to be exercisable by one person only; and
- (b) it could, at all times during its currency when that person is of full age and capacity, be exercised by him so as immediately to transfer to himself the whole of the interest governed by the power without the consent of any other person or compliance with any other condition, not being a formal condition relating only to the mode of exercise of the power.

(2) A power that satisfies the conditions of clauses *a* and *b* of <sup>Idem</sup> subsection 1 shall, for the purpose of the rule against perpetuities, be treated as a general power.

(3) For the purpose of determining whether an appointment <sup>Idem</sup> made under a power of appointment exercisable by will only is void for remoteness, the power shall be treated as a general power where it would have been so treated if exercisable by deed.

**12.**—(1) The rule against perpetuities does not invalidate <sup>Administrative powers of trustees</sup> a power conferred on trustees or other persons to sell, lease, exchange or otherwise dispose of any property, or to do any other act in the administration (as opposed to the distribution) of any property including, where authorized, payment to trustees or other persons of reasonable remuneration for their services.

**Application of subs. 1** (2) Subsection 1 applies for the purpose of enabling a power to be exercised at any time after this Act comes into force, notwithstanding that the power is conferred by an instrument that took effect before that time.

**Options to acquire reversionary interests** **13.**—(1) The rule against perpetuities does not apply to an option to acquire for valuable consideration an interest reversionary on the term of a lease,

- (a) if the option is exercisable only by the lessee or his successors in title; and
- (b) if it ceases to be exercisable at or before the expiration of one year following the determination of the lease.

**Application of subs. 1** (2) Subsection 1 applies to an agreement for a lease as it applies to a lease, and “lessee” shall be construed accordingly.

**Other options** (3) In the case of all other options to acquire for valuable consideration any interest in land, the perpetuity period under the rule against perpetuities is twenty-one years, and any such option that according to its terms is exercisable at a date more than twenty-one years from the date of its creation is void on the expiry of twenty-one years from the date of its creation as between the person by whom it was made and the person to whom or in whose favour it was made and all persons claiming through either or both of them, and no remedy lies for giving effect to it or making restitution for its lack of effect.

**Options to renew leases** (4) The rule against perpetuities does not apply nor do the provisions of subsection 3 of this section apply to options to renew a lease.

**Easements, profits à prendre, etc.** **14.** In the case of an easement, profit à prendre or other similar interest to which the rule against perpetuities may be applicable, the perpetuity period shall be forty years from the time of the creation of such easement, profit à prendre, or other similar interest, and the validity or invalidity of such easement, profit à prendre or other similar interest, so far as remoteness is concerned, shall be determined by actual events within such forty-year period, and the easement, profit à prendre or other similar interest is void only for remoteness if, and to the extent that, it fails to acquire the characteristics of a present exercisable right in the servient land within the forty-year period.

**Determinable interests** **15.**—(1) In the case of,
 

- (a) a possibility of reverter on the determination of a determinable fee simple; or

- (b) a possibility of a resulting trust on the determination of any determinable interest in real or personal property,

the rule against perpetuities as modified by this Act applies in relation to the provision causing the interest to be determinable as it would apply if that provision were expressed in the form of a condition subsequent giving rise on its breach to a right of re-entry or an equivalent right in the case of personal property, and, where the event that determines the determinable interest does not occur within the perpetuity period, the provision shall be treated as void for remoteness and the determinable interest becomes an absolute interest.

(2) In the case of a possibility of reverter on the determination of a determinable fee simple, or in the case of a possibility of a resulting trust on the determination of any determinable interest in any real or personal property, or in the case of a right of re-entry following on a condition subsequent, or in the case of an equivalent right in personal property, the perpetuity period shall be measured as if the event determining the prior interest were a condition to the vesting of the subsequent interest, and failing any life in being at the time the interests were created that limits or is a relevant factor that limits in some way the period within which that event may take place, the perpetuity period shall be twenty-one years from the time when the interests were created. <sup>Idem</sup>

(3) Even though some life or lives in being may be relevant in determining the perpetuity period under subsection 2, the perpetuity period for the purposes of this section shall not exceed a period of forty years from the time when the interests were created and shall be the lesser of a period of forty years and a period composed of the relevant life or lives in being and twenty-one years. <sup>Idem</sup>

**16.**—(1) A trust for a specific non-charitable purpose that creates no enforceable equitable interest in a specific person shall be construed as a power to appoint the income or the capital, as the case may be, and, unless the trust is created for an illegal purpose or a purpose contrary to public policy, the trust is valid so long as and to the extent that it is exercised either by the original trustee or his successor, within a period of twenty-one years, notwithstanding that the limitation creating the trust manifested an intention, either expressly or by implication, that the trust should or might continue for a period in excess of that period, but, in the case of such a trust that is expressed to be of perpetual duration, the court may declare the limitation to be void if the court is of opinion Specific non-charitable trusts

that by so doing the result would more closely approximate the intention of the creator of the trust than the period of validity provided by this section.

*Idem*

(2) To the extent that the income or capital of a trust for a specific non-charitable purpose is not fully expended within a period of twenty-one years, or within any annual or other recurring period within which the limitation creating the trust provided for the expenditure of all or a specified portion of the income or the capital, the person or persons, or his or their successors, who would have been entitled to the property comprised in the trust if the trust had been invalid from the time of its creation, are entitled to such unexpended income or capital.

*Rule in  
Whitby  
vs.  
Mitchell  
abolished*

**17.** The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without affecting any other rule relating to perpetuities.

*Rules as to  
perpetuities  
not appli-  
cable to  
employee-  
benefit  
trusts*

**18.** The rules of law and statutory enactments relating to perpetuities do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits, to employees or to their widows, dependants or other beneficiaries.

*Application  
of Act*

**19.** Except as provided in subsection 2 of section 12 and in section 18, this Act applies only to instruments that take effect after this Act comes into force, and such instruments include an instrument made in the exercise of a general or special power of appointment after this Act comes into force even though the instrument creating the power took effect before this Act comes into force.

*Short title*

**20.** This Act may be cited as *The Perpetuities Act, 1966.*



# BILL 131

An Act to modify  
the Rule against Perpetuities

*1st Reading*

May 26th, 1966

*2nd Reading*

June 8th, 1966

*3rd Reading*

June 23rd, 1966

MR. WISHART

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## BILL 132

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4TH SESSION, 27TH LEGISLATURE, ONTARIO  
14-15 ELIZABETH II, 1966

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### An Act to amend The Accumulations Act

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MR. WISHART

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TORONTO

PRINTED AND PUBLISHED BY FRANK FOGG, QUEEN'S PRINTER



BILL 132

1966

**An Act to amend The Accumulations Act**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Subsection 1 of section 1 of *The Accumulations Act* R.S.O. 1960, c. 4, s. 1, is repealed and the following substituted therefor: subs. 1, re-enacted

- (1) No disposition of any real or personal property shall direct the income thereof to be wholly or partially accumulated for any longer than one of the following terms:
1. The life of the grantor.
  2. Twenty-one years from the date of making an *inter vivos* disposition.
  3. The duration of the minority or respective minorities of any person or persons living or *en ventre sa mère* at the date of making an *inter vivos* disposition.
  4. Twenty-one years from the death of the grantor, settlor or testator.
  5. The duration of the minority or respective minorities of any person or persons living or *en ventre sa mère* at the death of the grantor, settlor or testator.
  6. The duration of the minority or respective minorities of any person or persons who, under the instrument directing the accumulations, would, for the time being, if of full age, be entitled to the income directed to be accumulated.

Application of subs. 1  
restrictions

(1a) The restrictions imposed by subsection 1 apply in relation to a power to accumulate income whether or not there is a duty to exercise that power, and such restrictions also apply whether or not the power to accumulate extends to income produced by the investment of income previously accumulated.

**Idem**

(1b) The restrictions imposed by subsection 1 apply to every disposition of real or personal property, whether heretofore or hereafter made.

Previous acts, etc.,  
not affected

(2) Nothing in subsection 1 affects,

- (a) the validity of any act done; or
- (b) any right acquired or obligation incurred,

R.S.O. 1960, under *The Accumulations Act* before this Act came into force.  
c. 4

R.S.O. 1960,  
c. 4,  
amended

**2.** *The Accumulations Act* is amended by adding thereto the following section:

Rules as  
to accumu-  
lations not  
applicable  
to employee  
benefit  
trusts

3. The rules of law and statutory enactments relating to accumulations do not apply and shall be deemed never to have applied to the trusts of a plan, trust or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, death or other benefits to employees or to their widows, dependants or other beneficiaries.

**Short title**

**3.** This Act may be cited as *The Accumulations Amendment Act, 1966.*



# BILL 132

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An Act to amend The Accumulations Act

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*1st Reading*

May 26th, 1966

*2nd Reading*

June 8th, 1966

*3rd Reading*

June 23rd, 1966

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MR. WISHART

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## BILL 133

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4TH SESSION, 27TH LEGISLATURE, ONTARIO  
14-15 ELIZABETH II, 1966

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### An Act to amend The Trustee Act

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MR. WISHART

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**BILL 133****1966****An Act to amend The Trustee Act**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** *The Trustee Act* is amended by adding thereto the R.S.O. 1960,  
following section: c. 408,  
amended

**64a.** Where in the administration of any trust, estate or fund any question relating to the disposition, transmission or devolution of any property arises, including the right of any person to terminate a trust or an accumulation directed under a trust or other disposition, and it becomes relevant to inquire whether any person is or at a relevant date was or will be capable of procreating or giving birth to a child, section 7 of *The Perpetuities Act, 1966* applies to any such question as it applies to questions concerning the rule against perpetuities.

**2.** This Act may be cited as *The Trustee Amendment Act, 1966.* Short title

BILL 133

An Act to amend The Trustee Act

*1st Reading*

May 26th, 1966

*2nd Reading*

June 8th, 1966

*3rd Reading*

June 23rd, 1966

MR. WISHART

## **BILL 134**

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**4TH SESSION, 27TH LEGISLATURE, ONTARIO  
14-15 ELIZABETH II, 1966**

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### **An Act to amend The Conveyancing and Law of Property Act**

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**MR. WISHART**

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**TORONTO**

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**BILL 134****1966**

**An Act to amend  
The Conveyancing and Law of Property Act**

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 64 of *The Conveyancing and Law of Property Act* R.S.O. 1960,  
c. 66, s. 64,  
repealed, is repealed.

**2.** This Act may be cited as *The Conveyancing and Law of Property Amendment Act, 1966*. Short title

**BILL 134**

An Act to amend The Conveyancing  
and Law of Property Act

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*1st Reading*

May 26th, 1966

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*2nd Reading*

June 8th, 1966

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*3rd Reading*

June 23rd, 1966

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MR. WISHART

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